

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

LEO ERWIN §
VS. § CIVIL ACTION NO. 1:05cv741
DIRECTOR, TDCJ-CID §

MEMORANDUM ORDER ADOPTING THE MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION

Petitioner Leo Erwin, an inmate confined at the Goodman Unit, proceeding *pro se*, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The Court referred this matter to the Honorable Earl S. Hines, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this Court. The Magistrate Judge recommends the above-styled petition be dismissed.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, pleadings and all available evidence. No objections to the Report and Recommendation of United States Magistrate Judge were filed by the parties.

Petitioner subsequently filed a motion to dismiss the petition. Pursuant to Federal Rule of Civil Procedure 41(a), petitioner is entitled to voluntarily dismiss his action prior to the service of adverse parties. As the respondent has not been

served in this action, petitioner's motion to dismiss should be granted.

O R D E R

Accordingly, the findings of fact and conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge is **ADOPTED**. It is **ORDERED** that petitioner's motion to dismiss is **GRANTED**. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendations.

So **ORDERED** and **SIGNED** this **3** day of **June, 2006**.

A handwritten signature in cursive script, appearing to read "Ron Clark", is written above a horizontal line.

Ron Clark, United States District Judge